

# **ATTACHMENT 59**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
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5   IN RE:   PROCESSED EGG PRODUCTS:                   MDL NO. 2002  
6   ANTITRUST LITIGATION                               08-MDL-02002  
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9                               PHILADELPHIA, PA  
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11                               MAY 11, 2018  
12                               DAY EIGHT

13   BEFORE:               THE HONORABLE GENE E.K. PRATTER, J.  
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15                               - - - - -

16                               TRIAL TRANSCRIPT  
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21                               KATHLEEN FELDMAN, CSR, CRR, RPR, CM  
22                               Official Court Reporter  
23                               Room 1234 - U.S. Courthouse  
24                               601 Market Street  
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(Transcript produced by mechanical shorthand via C.A.T.)

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1 Please state your full name and spell your last name for the  
2 record.

3 THE WITNESS: Marcus Rust.

4 THE COURT: R-U-S-T?

5 THE WITNESS: R-U-S-T, like in corrosion.

6 THE COURT: Okay. Are you comfortable there?

7 THE WITNESS: Yes.

8 THE COURT: Good. Keep your voice up, good  
9 afternoon.

10 And, Mr. Neuwirth, you may proceed.

11 MR. NEUWIRTH: Thank you, Your Honor.

12 Good afternoon, Mr. Rust.

13 Good afternoon, ladies and gentlemen.

14 DIRECT EXAMINATION

15 BY MR. NEUWIRTH:

16 Q. Mr. Rust, you are the chief executive officer of Rose  
17 Acre Farms, one of the Defendants in this case?

18 A. Yes.

19 Q. And for how long have you been chief executive officer of  
20 Rose Acre?

21 A. I've been that since 2011.

22 Q. And prior to 2011, what positions did you hold at the  
23 company?

24 A. Well, it's a family farm and we all have done our various  
25 things, and I took care of construction and helped with egg

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1 sales and just lots of different things.

2 Q. Well, what was your position at the company in the year  
3 2002, if you recall?

4 A. The same, about the same thing, doing the same general  
5 stuff I did -- I do every day.

6 Q. Did you have a title?

7 A. I was kind of vice president, I guess. That was the  
8 official title, but it wasn't one -- it's not up on my wall or  
9 anything like that, anyplace, not on my door.

10 Q. And you -- is it correct that you held that title or  
11 unofficial title of vice president until 2011 when you became  
12 the Chief Executive Officer?

13 A. Yeah, we're a chicken farm. We're not title people.

14 Q. Now, what you've described as this chicken farm, today it  
15 has over 24 million laying hens, correct?

16 A. Yes.

17 Q. And it's correct that Rose Acre has 20 facilities in  
18 eight different states, correct?

19 A. That could be right. I think it may be 18, but I'd have  
20 to go through and count. I don't -- I don't tally like this  
21 many farms or that many farms.

22 Q. But maybe roughly 18 in eight different states?

23 A. Yeah, yeah.

24 Q. And it's correct -- well, let me ask you this: Your  
25 counsel, I believe, said in presenting an opening on behalf of

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1 Rose Acre to the Court and the jury on May 4th, said that as  
2 of 2014, Rose Acre, for the year, had produced 6.9 billion  
3 eggs.

4 Does that sound right to you?

5 A. It could be.

6 Q. Do you know where your counsel would have gotten that  
7 number?

8 A. I would assume someone in our sales department would have  
9 gave it to him.

10 Q. Okay. And is it correct that at some of Rose  
11 Acre's facilities, the production of eggs is very highly  
12 automated?

13 A. We have what is called integrated farms. And when I say  
14 "integrated," we go from day one, we actually buy breeder  
15 chicks and we take the breeder chicks and we grow them up to  
16 full-grown layers, and they're breeders and we take -- and  
17 they have roosters in there with them, and we take those  
18 fertile eggs and put them into our hatchery. And they  
19 incubate for 21 days in the hatchery, and then they get moved  
20 to our pullet farms where they grow from zero to 16 or 17  
21 weeks of age, and then we move them to a layer farm.

22 And the layer farm then is a -- it will be a large  
23 farm with multiple buildings, henhouses, and we will put --  
24 there's all automatic conveyer belts that transport the eggs  
25 from the chickens to the houses, to the main belt, and they go

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1 into the egg grader and humans never touch the eggs. It's a  
2 very automated system and very complicated and it needs very  
3 good people to take care of it.

4 Q. And, in fact, I think you've explained when you gave some  
5 testimony in this case, as I think you just said, that in the  
6 layer part of your business, where you have the hens laying  
7 eggs and then the eggs are produced, that the eggs can go from  
8 the chicken to the egg case without ever being touched by a  
9 person, correct?

10 A. Theoretically, we can have it in an egg case from the  
11 chicken, maybe in 15 minutes at the soonest, and the ones  
12 farthest away it could be two hours.

13 Q. And, again, that would be without any human being  
14 actions?

15 A. Without a human touching it.

16 Q. And the facilities that Rose Acre has are very large  
17 henhouses. And when I say "facilities," I'm focusing on the  
18 part of the business that involves the laying of shell eggs.  
19 Rose Acre has very large henhouses that sometimes will hold  
20 several hundred thousand hens at once, correct?

21 A. Yes.

22 Q. And that is true of all the facilities where Rose Acre  
23 produces eggs, correct?

24 A. That is true of most egg farms in the United States.

25 Q. Okay. Certainly the large ones?

1 A. Most.  
 2 Q. Yes.  
 3 Now, is it correct that Rose Acre joined the  
 4 organization known as the United Egg Producers in the year  
 5 2002?  
 6 A. Yeah, I think February 2002.  
 7 Q. And it's correct, isn't it, that right at the time that  
 8 Rose Acre joined the United Egg Producers, you, as a  
 9 representative of Rose Acre, became a member of the United Egg  
 10 Producers Board of Directors, correct?  
 11 A. Yes.  
 12 Q. And do you remain a member of the Board of Directors  
 13 through to today?  
 14 A. I still am today, yes.  
 15 Q. Okay. And you were a member of the Board throughout the  
 16 period at least from 2002, when Rose Acre joined the United  
 17 Egg Producers, through the end of 2008, correct?  
 18 A. Yes.  
 19 Q. And you also took a position on the United Egg Producers  
 20 marketing committee, correct?  
 21 A. Yes. We wanted to make sure we were involved in every  
 22 aspect of that. For us it was kind of like a -- you know,  
 23 kids on to school for the first time. You wanted to make sure  
 24 you knew every part of the function that was going on, because  
 25 we had never been part of a co-op before.

1 Q. Okay. And the -- in addition to being a member of the  
 2 marketing committee officially, you would also attend  
 3 meetings, at least during this period, 2002, when you first  
 4 joined, of the United Egg Producers Animal Welfare Committee,  
 5 correct?  
 6 A. Yes.  
 7 And I need to correct something I just said earlier.  
 8 Q. Yes.  
 9 A. I think I wasn't a member of the marketing committee till  
 10 maybe the second year or something like that.  
 11 Q. Okay.  
 12 A. I wasn't right off.  
 13 Q. But right off, you did start to attend --  
 14 A. We had more people at the marketing committee.  
 15 Q. Okay, thank you for the clarification.  
 16 And it's correct, isn't it, that almost immediately  
 17 upon joining the United Egg Producers, you personally started  
 18 attending meetings of the Animal Welfare Committee, the  
 19 Producers Committee on Animal Welfare?  
 20 A. Not as a committee member. I attended the animal welfare  
 21 just as an egg farmer wanting to know what's going on.  
 22 Q. And, in fact, you attended many meetings of the Animal  
 23 Welfare Committee even though you were not an official member,  
 24 correct?  
 25 A. I attended every one I could every time I was there.

1 There's a few times I was not there, but, you know, when  
 2 you're in the chicken business, and everything you own is a  
 3 cage, and animal righters are trying to get rid of cages,  
 4 you're making sure that you're taking very good notice of  
 5 what's going on.  
 6 Q. And you were an active participant in those meetings,  
 7 even though you were not an official member of the committee,  
 8 correct?  
 9 A. Sometimes quiet; sometimes vocal.  
 10 Q. Now, when Rose Acre first joined the United Egg Producers  
 11 in early 2002, I think you said it was roughly February 2002,  
 12 that was a time when the United Egg Producers was in the  
 13 process of adopting an Animal Welfare Program, as they called  
 14 it at that time, with a 100% rule, correct?  
 15 A. That was -- we had very limited understanding of what  
 16 they were developing until we got involved.  
 17 Q. Right. And -- but it is the case, isn't it, that roughly  
 18 at that time, the United Egg Producers, including at Board  
 19 meetings, was officially adopting a certified program that  
 20 included a 100% rule, correct?  
 21 A. They -- I don't think the 100% rule come up until later.  
 22 It wasn't at the first part.  
 23 Q. Well, do you recall that as early as March of 2002, the  
 24 United Egg Producers adopted a version of the 100% rule that  
 25 was then adopted again at a meeting in October of 2002?

1 A. I would have to look at paperwork to verify one way or  
 2 the other.  
 3 Q. Okay. Now, it's correct, isn't it, that when you first  
 4 arrived or first became involved in the United Egg Producers,  
 5 you and other people at Rose Acre questioned the motives of  
 6 this new Animal Welfare Program?  
 7 A. We were very suspicious of UEP as a group. There had  
 8 been various members of UEP that filed multiple lawsuits  
 9 against us prior years and we just were afraid of what -- some  
 10 of the things they may be doing.  
 11 Q. And who is K.Y. Hendrix?  
 12 A. That's my brother-in-law. My sister's --  
 13 Q. And -- I didn't mean to interrupt you.  
 14 And K.Y. Hendrix, in addition to being your  
 15 brother-in-law, worked and was actively involved in Rose  
 16 Acre's business, correct?  
 17 A. Yes. He was sat on the Animal Welfare Committee for the  
 18 family.  
 19 Q. Okay. And who is Lois Rust?  
 20 A. That's my mother.  
 21 Q. And at that time in 2002, was she the Chief Executive  
 22 Officer of the company?  
 23 A. She never really had that title. She was, I think,  
 24 president and then Chairman of the Board.  
 25 Q. Okay. Was she still actively involved at that time in

1 the management of the company, in 2002?

2 A. Yes. And she still is yet today. Mom's mom.

3 Q. Okay. And do you recall that K.Y. Hendrix sent a memo to

4 you and to your mother, Lois Rust, in March of 2002 very soon

5 after Rose Acre had joined the United Egg Producers

6 questioning the motive of the new Animal Welfare Program?

7 A. Yes.

8 Q. Okay. Let me hand you a document that has been marked as

9 Plaintiffs' Exhibit 3.

10 MR. NEUWIRTH: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. NEUWIRTH:

13 Q. And when you said that you recalled a memo that

14 K.Y. Hendrix had sent to you and also to Lois Rust in March

15 of 2002 raising questions about the motives of the Certified

16 Program, was this the memo that you were referring to?

17 A. I think it is.

18 Q. Okay.

19 A. Mom sends lots of memos and notes out, and you have to

20 do -- I think this is where we made sure that my

21 brother-in-law was to be put on one of the committees that

22 looked at it because Mom was very suspicious of the group.

23 Q. Well, this memo is actually -- at least the typewritten

24 portion of it was something that K.Y. Hendrix sent to Lois

25 Rust, Anthony Rust, Marcus Rust, Victor Rigterink and David

1 Hurd; is that correct? Do you see that on the first page?

2 A. Yes, but I'm not sure that they would have gotten the

3 handwritten version. I have no idea, with the type --

4 Q. Right. So my question was just about the typewritten

5 version. The typewritten portion says expressly that

6 K.Y. Hendrix had sent this on March 14, 2002 to you and to

7 your mother, Lois Rust, and several other people at Rose Acre,

8 correct?

9 A. Yes, that's what I see, yeah.

10 Q. And I take it, based on your prior answers, that you

11 recall having received this at the time, correct?

12 A. I don't recall having received this at the exact specific

13 time, but since this, you guys sued us, I've seen it several

14 times.

15 Q. Okay. And you don't have any reason to doubt that, in

16 fact, it was sent to you at that time?

17 A. This is my mother's handwriting.

18 Q. Okay.

19 A. She's -- she likes to write things.

20 Q. And just to be clear, what you're talking about is on the

21 second page of this document that was sent by K.Y. Hendrix,

22 there is a response in -- that's been written by -- by Lois

23 Rust, by hand, correct?

24 A. Correct.

25 MR. NEUWIRTH: Your Honor, we would move the

1 admission of Plaintiffs' Exhibit Number 3.

2 MR. KING: No objection.

3 THE COURT: 3 is admitted.

4 MR. NEUWIRTH: And if we could put -- if we could

5 please put up Plaintiffs' Exhibit Number 3. And if we can

6 just bring out the top.

7 BY MR. NEUWIRTH:

8 Q. As you said this is a memo that K.Y. Hendrix sent to you

9 and your mother and others on the subject of the UEP Animal

10 Welfare Guidelines and audit, correct?

11 A. Yes.

12 Q. And that is --

13 MR. NEUWIRTH: There may be some water up there.

14 THE WITNESS: I got some water here.

15 BY MR. NEUWIRTH:

16 Q. And do you see that the subject is the UEP Animal Welfare

17 Guidelines and Audit, and it's dated March 14, 2002, correct?

18 A. Yes.

19 Q. And could I ask you if you could turn to the second -- to

20 the second page of the document.

21 MR. NEUWIRTH: If we can put up the second page, and

22 if we could it blow up --

23 THE WITNESS: Is that the same as this?

24 BY MR. NEUWIRTH:

25 Q. Yes.

1 A. Is this the same?

2 Q. Yes.

3 A. Because I can't read that.

4 Q. Yes, it's the same thing.

5 And so if we can look at the second page, and you'll

6 see in the carryover paragraph, there's a sentence that

7 begins: I don't really know what this whole motive is.

8 Do you see that? It's about five lines down.

9 A. Yes.

10 Q. And do you see it says: I don't really know what this

11 whole motive is, but I think there is more to it than animal

12 welfare. I think some people think it will make them rich or

13 something. I have never been or never will be for quotas, and

14 it seems to me that is somewhat of the path they are taking.

15 Do you see that?

16 A. Yes. This was something that we were very concerned

17 about. My father actually went to Congress and spoke in front

18 of Congress against quotas, against supply management. Again,

19 we wanted no part of that, and that was the issue that we were

20 afraid that was happening to us. You know, you have to

21 understand, we had trucks being burned up. They was attacking

22 us, the animal rights group.

23 Q. You say you had trucks being burned up?

24 A. Truck. Tractor and trailer.

25 Q. It was one truck?

1 A. Well, it's a tractor and a trailer. So...

2 Q. That were attached to each other, correct?

3 A. Yes.

4 Q. And I think your counsel showed a picture of it during

5 his opening, but do you recall that you testified at your

6 deposition that you didn't even recall when that had occurred?

7 A. I couldn't recall what the exact date was. You know, I'm

8 one of those, I remember it happening, I went and looked at

9 the thing, you know, whether it was 2000, 2001, 2002, 1999, I

10 couldn't tell you that exact date --

11 Q. Right.

12 A. -- without looking at some kind of a record.

13 Q. Okay. Now, I think you have testified previously that

14 you -- and I think you indicated today that at this time, you

15 actually shared the concerns that Mr. Hendrix was stating here

16 in this memo, correct?

17 A. Yes.

18 Q. Now, you indicated earlier that the handwriting here

19 comes from -- from your mother, Lois Rust, that you recognize

20 the handwriting.

21 A. Yes.

22 Q. And was it her regular practice at this time to send

23 messages that she might write out by hand?

24 A. That's what she's always done. I don't think I've ever

25 gotten an e-mail from her. I always get something that was

1 etched on the back.

2 Q. Okay. And I take it you're very familiar with her

3 handwriting and are able to read it?

4 A. I -- through the years, I probably got thousands of

5 these.

6 Q. Okay, and do you see here that she's written her response

7 right next to the paragraph that included the language that we

8 just read, where Mr. Hendrix says he doesn't really know this

9 whole motive, but he thinks that there's more to it than

10 animal welfare, correct?

11 A. Yes. I was not at the meeting that he attended where he

12 heard something. I don't know what was said.

13 Q. Okay, but I think you said earlier that you shared these

14 concerns?

15 A. We -- the family. Our family was very divided on us

16 joining UEP or not.

17 Q. Okay. Now, do you see that there is a line, your mother

18 wrote a couple of things at the top.

19 Are you able to read what she wrote there on the

20 right side in those two little passages above the line at the

21 very top?

22 A. And you're talking -- I'm pretty sure I can.

23 Q. Okay, are you able to read it out loud for us? And I'm

24 asking you just to make sure that we are correctly

25 interpreting the words there.

1 A. It says: Were a lot of vocal -- and I think it's

2 concerning against who -- and I -- who true -- it looks like

3 vertical, maybe.

4 Q. Okay.

5 A. And were only a few egg producers for it.

6 Q. Okay. So let me just ask about that. Do you have a

7 recollection --

8 A. I think it says true, who is true vertical. I'm not --

9 Q. Okay. But you did see there that it says: Was only a

10 few egg producers for it. You read that there?

11 A. Oh, this was referencing the DAD fighting -- DAD was one

12 of probably only two or three other producers in the whole US

13 that come and fought the marketing order, and this was about

14 fighting the marketing order that UEP was promoting and trying

15 to get in to where they put quotas on. What they wanted at

16 that time, they wanted everyone to have a quota. You could

17 have 100 chickens or 10,000 chickens, and once you got that

18 many chickens, you couldn't have any more. Someone new

19 couldn't come into the business. They wanted to make it like

20 Canada and make it a managed supply agreement and have quotas

21 to where you couldn't be a capitalistic independent producer.

22 Q. And then under the line, is it correct that your mother

23 wrote: Animal welfare people are going to big buyers? And it

24 looks like it says: And leaving Congress and the law out of

25 it.

1 Do you see that?

2 A. Yes.

3 Q. Then it says: Because there are so few buyers now!

4 Do you see that?

5 A. Yes.

6 Q. What -- did you have an understanding of what your

7 mother, Lois Rust meant when she said "because there are so

8 few buyers now"?

9 A. Well, when you have someone giant like Walmart and

10 Krogers that buy 30 to 40 percent, maybe 50 percent of all the

11 shell eggs, you know, just one or two companies of what we

12 call graded shell eggs, that's a few buyers when you're a

13 chicken farmer.

14 You know, the grocery industry has been taking over.

15 You know, there's very few people to sell to. As egg

16 producers, we play a game of musical chairs. They bid us out.

17 You know, over a 20-year period, we may have had Kroger and

18 lost it three or four times. We may have lost Walmart

19 warehouses three or four times. They're always bidding

20 against each other.

21 Q. Now, there's been substantial consolidation of the egg

22 industry as well, correct?

23 A. Yeah, I think they're still like 65 producers that have

24 had like a million birds or more.

25 Q. Right. And in the 1990s, there were maybe 600, correct?

1 A. Correct. And what happens is, the Walmarts of the world  
 2 don't want to deal with a bunch of small vendors. They want  
 3 big producers. But then they also don't want to pay anything.  
 4 So, you know, it's a real clash.  
 5 Q. And Cal-Maine -- Cal-Maine was, and in 2000 and remains  
 6 today, the largest egg producer -- shell egg producer in the  
 7 United States, correct?  
 8 A. Correct.  
 9 Q. And Rose Acre, in 2000 through today, is the second  
 10 largest, correct?  
 11 A. We're, I think the third. Second or third, it depends on  
 12 how you -- some people have multiple operations under multiple  
 13 facets of how they do -- we fill everything in one basket.  
 14 Q. Okay. Now, it then says: This is gorilla warfare, and  
 15 they are ahead of us by 20 years. We're in.  
 16 And it says: We've had one truck burned up already  
 17 and best way is to keep a low profile because they, animal  
 18 welfare, want attention.  
 19 Do you see that?  
 20 A. Yes.  
 21 Q. And what did you understand that Lois Rust was referring  
 22 to in that note that she sent?  
 23 A. We, as a family, had decided that because of all of the  
 24 activism, what was taking place is during the -- whenever a  
 25 big restaurant chain or Kroger or Walmart would have a Board

1 meeting, the animal activists would go there and do protests  
 2 whenever they had their Board meetings, trying to say, like,  
 3 you know, all these people, were going to protest all your  
 4 stores, we're here doing this protest. And they started doing  
 5 all of the Board meetings. And then the other things that  
 6 they done at that point in time was we, you know, we were out  
 7 there trying -- when I say we want to be a low profile, we  
 8 knew we had to get with the majority of the other egg  
 9 producers and figure out how we could protect our livelihood.  
 10 Everything our family had invested was in our henhouses. And  
 11 these animal rights groups were trying to take our right away  
 12 to produce chickens in cages.  
 13 You know, our family, every chicken we own before  
 14 1966 was cage-free. In 1967, we built our first -- 1966 is  
 15 when we actually built our first caged chicken house, and it  
 16 was just like all of our problems went away and how much  
 17 better the birds did, how much -- it was just -- it was like a  
 18 miracle, you know, for an egg farmer to go from cage-free to  
 19 cages.  
 20 And as everything changed, we knew coming back in to  
 21 this, when the animal rights groups would come in and want to  
 22 attack us, we could not -- and that's that 100 percent thing,  
 23 we didn't want to be the target. We knew if we were united  
 24 with a bunch of other egg farmers that wanted to keep their  
 25 cages, and we all agreed to a certain method of production,

1 and it didn't matter how many henhouses we built or had, we  
 2 would be able to defend that and hopefully keep our right to  
 3 produce eggs from cages.  
 4 And, you know, in a nutshell, today we've lost that  
 5 war. You know, the State of California is getting ready to  
 6 vote and ban cages totally. The State of Massachusetts has  
 7 already banned them. And, you know, we're chicken -- when a  
 8 farmer makes an investment in his henhouse, he wants to use  
 9 it. And we built stuff that will last 30, 40 years. We've  
 10 got a chicken farm I built in 1984, that the cages are  
 11 35-years-old today, or 34-years-old. They'll be 35 next year.  
 12 And it's still a great farm. You know, we don't want to tear  
 13 it down just because some animal activists say you can't have  
 14 your chicken in cages now.  
 15 We've always went with what we called the best  
 16 available technology, because, you know, it's always been our  
 17 family's ability to produce eggs absolutely as cheap as  
 18 possible. I've got a brother I fight with over, you know, he  
 19 wants everything to be cage -- cage or free roaming. He don't  
 20 think there should be an in between. But, you know, I think I  
 21 want to protect what we've got because I know how -- what  
 22 happened in Europe, they banned them in Europe, you know, half  
 23 of the northern tier in Europe they don't allow cages anymore.  
 24 You know, we're just chicken farmers. Yes, we're big, but  
 25 everything we've ever done we've put back into the farm.

1 Q. You mentioned these cages that are 35-years-old that are  
 2 still in use today. Are any of those what were known as the A  
 3 cages, the A-shaped cages.  
 4 A. They're what they call the A-frame cage.  
 5 Q. The A-frame cage.  
 6 And Rose Acre continues to use those in some  
 7 facilities through to today, correct?  
 8 A. They work well and they still work well.  
 9 Q. And those are the cages that Scientific Committee of the  
 10 United Egg Producers had identified as problematic because  
 11 they allow feces from birds that are on the top shelves to  
 12 land on the hens below or in their food, correct?  
 13 A. There's about 20 percent of the back ends of the cage  
 14 that when the chickens, if they're all in there feeding from  
 15 the feeders, they can do that. But when you have a free-range  
 16 house, the chickens are roosting all over, and then, you know,  
 17 they defecate on each other too, whether it's free-range or  
 18 not. The chicken is an animal. It does not have a  
 19 predisposed place it's going to go poop. It just does it  
 20 wherever it's going to do it.  
 21 Q. You don't deny, do you, that the Scientific Committee of  
 22 the United Egg Producers had identified the A-frame cages as a  
 23 problem because of the problem of feces falling from the top  
 24 of the A-frame down into the lower cages, correct?  
 25 A. Correct. And there was some systems that had got made

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1 that didn't even have manure curtains.

2 THE COURT: Mr. Neuwirth, can we take a break at

3 this point?

4 MR. NEUWIRTH: I must say --

5 THE COURT: I didn't know how to do it. But

6 Mr. Coyle had asked me if we could take a break here too.

7 MR. NEUWIRTH: Okay.

8 THE COURT: And I think it's about that time.

9 It's Friday.

10 Ladies and gentlemen, we'll be back in ten minutes.

11 Don't talk about the case.

12 THE DEPUTY CLERK: All rise.

13 (Jury out.)

14 THE COURT: It was your --

15 MR. NEUWIRTH: It's better than the egg jokes.

16 THE COURT: Says you.

17 Okay. Why don't you all take your break and come on

18 back.

19 THE WITNESS: Thank you. Do I need to stay up here

20 or I can go --

21 THE COURT: Whatever you'd like.

22 (After recess:)

23 THE COURT: Okay, do you want to see if they're

24 ready?

25 Are they ready to come back? Yes.

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1 would always be people who weren't and the animal rightists,

2 they had a \$5,000 bounty for any video that you could get

3 posted on the Internet on something, that -- I think PETA,

4 HSFUS, they would pay this for what they called cruel and

5 inhuman treatment of animals.

6 And if your bounty got published and run on the CBS

7 major news networks, then you'd get this extra money for doing

8 that. We didn't want to be that target and we wanted -- and

9 that's why you'll hear a lot about the 100% rule, but that was

10 one of the main reasons that we wanted that, because we wanted

11 someone who was squeezing their chickens and really cramming

12 them in the cages to be the person in the video, not us.

13 Q. Okay. So does that answer mean that you now remember

14 that at this time, the program included a 100% rule?

15 A. No. I said when we'd be talking later -- at that point

16 in time, we knew we wanted to get to the 100% rule, but I

17 don't think it was in the UEP Program at that time.

18 Q. Okay. Now, your mother then wrote: Have you seen the

19 "not and warm as cuddly as you think" on the Internet?

20 Was that some sort of animal rights group Internet

21 video or the like? Do you recall?

22 A. I have no idea what she referred to there.

23 Q. Okay. It says: Is also why John pushed so hard for free

24 roaming.

25 Do you know who the John is that's referred to

218

1 (Discussion off the record about further witnesses.)

2 (Jury in.)

3 THE COURT: Okay, everybody, you may take your

4 seats.

5 Is everything okay, Mike?

6 Mr. Neuwirth, you may proceed.

7 MR. NEUWIRTH: Thank you, Your Honor. Thank you.

8 BY MR. NEUWIRTH:

9 Q. Okay. Thank you, Your Honor.

10 Mr. Rust, if we could return our attention to

11 Plaintiffs' Exhibit 3, which is the memo that K.Y. Hendrix

12 sent to you and your mother and others in March of 2002, and

13 we were going through the note that your mother wrote on this

14 memo and you had -- we had gone through the line about gorilla

15 warfare and then I think she says -- she said that: We've had

16 one truck burned up already and best way is to keep a low

17 profile.

18 A. Yes.

19 Q. Do you know what that was referring to in the suggestion

20 to keep a low profile?

21 A. Well, that was -- a low profile, you don't want to be the

22 target and so, you know, if you don't want to be the target,

23 you have to create -- you have to let someone else be the

24 target, and that was one of the reasons we were so adamant

25 about the so-called -- getting to the 100% rule, because there

220

1 there?

2 A. That's my brother, John, that -- him and I have had a

3 constant back and forth over the years about -- he wanted to

4 be all free-roaming birds and split it out and have a separate

5 and I thought we wanted -- I wanted to protect what we had.

6 And he felt that if you keep a chicken in a cage, it's caged.

7 He didn't care how many square inches. It's still a caged

8 bird.

9 I always felt, no, we should get some rules to

10 defend, you know, what our assets are, you know, chicken

11 houses that we already have, and he always felt -- he wanted

12 this utopia world where he could be selling free-roaming

13 against what we were doing. And, you know, that's -- it's the

14 way it's kind of ending up, but at the time, I just wasn't

15 buying into having two different systems.

16 We went ahead and started doing cage-free. John

17 never worked with the cage-free birds when he was young. I

18 did. I knew what the problems were with cage-free versus

19 cage.

20 Q. And I take it, from what you just said, that things have

21 changed today with respect to cage-free but that they were

22 different then. I take it you would agree with the

23 proposition that to evaluate what was happening in the period

24 of around 2002, we should really look at what was going on

25 then as opposed to trying to judge it by what might be



1 happening today in 2018, correct?

2 A. Restate your question. I kind of lost you in all that.

3 Q. You just said that today, the world has changed with

4 respect to cage-free eggs and you said that in 2002, your goal

5 was to keep what you said Rose Acre had, which is this cage

6 system.

7 I take it then you agree with the proposition that

8 in evaluating what Rose Acre was doing in 2002 and the

9 Certified Program or other otherwise, we should really be

10 looking at what the conditions were then as opposed to trying

11 to judge it from what things are like today, correct?

12 A. That's not a "yes" or "no" answer thing. That's a pretty

13 convoluted -- we're in a situation today, our family, we've

14 been told by our customers we're going to be cage-free, but by

15 2022 to 2025 by 90 percent of the people we sell our eggs to,

16 and, you know, we don't have the money to go out and rebuild

17 and turn everything into cage-free and what they're saying is

18 that's all they're going to buy. And we -- when we was

19 looking at this thing in 2002, my goal then was to protect the

20 rights to have chickens in cages, because I really think the

21 system that separates the chicken from its feces and the egg

22 as quick as possible is the very best system to have, you

23 know, for consumers and for the chicken.

24 Q. Right. And in 2002, you had no idea what was going to be

25 happening today with cage-free eggs, correct?

1 A. Yeah, I don't know the exact test, but there are

2 multiple -- in lots of the magazines and stuff, the different

3 people subscribe to, like Feedstuffs, there was articles in

4 there about where different producers had different results

5 from different square inches, and then I think there's like a

6 North Carolina State University, they done these random sample

7 tests, and they would do studies based on cage density, how

8 the performance of the birds was.

9 And -- and the absolute picture perfect performance

10 for a chicken may be 85, 86 square inches, but that's not a

11 good economic return for a producer. The producer can make

12 the most money at 45 inches because they're just cramming them

13 in, the chickens can't move, and then they don't -- when they

14 don't move, they don't eat as much. You know, you all got

15 kids. You watch them run around in the yard. They come in

16 and they're hungry. If you locked them up in a closet all

17 day, they wouldn't eat much.

18 And so when you have chickens that are crammed in a

19 cage, you know, if we cram too many of them in, they don't

20 move, they don't eat, that makes their cost of feed to feed

21 the chickens per dozen eggs less. When you give them more

22 space, they're moving around -- now they'll eat a little bit

23 more but they also -- there's a point where they can start

24 getting what they call aggressive.

25 You give them too much space and that's when the

1 A. I was scared to death by what was happening in Europe.

2 In Europe, I had a good friend that lived with me for six

3 months. My brother James actually, he's sitting back there,

4 he went and lived with Frank Zimmer in Germany for -- I think

5 it was six months and worked with the different systems they

6 had over there and in Europe.

7 They got told by their legislation, the farmers had

8 no choice. The EU voted their lively -- you know, their cage

9 systems out of existence. They owned a factory and we got

10 probably a million chickens in their cages yet today that made

11 those cages, and they had to quit making cages because the

12 Government just took the right to have cages away from the

13 farmers there.

14 Q. Right. And I take it from what you're saying that you

15 wanted to be sure to do whatever you could to prevent that

16 from happening?

17 A. I wanted to do absolutely everything possible so we could

18 keep cages here in the US, and I was willing to give them, you

19 know, to go to a certain amount of square inches that was

20 scientifically defensible so we could have a position that we

21 could defend.

22 Q. Okay. Now, it says: UEP did the right thing -- going

23 back to what your mother wrote: UEP did the right thing to

24 have the cage test as it was done scientifically.

25 Do you know what that's referring to?

1 pecking order sets in, and they start pecking each other. You

2 know, when they have you enough room to peck and back up,

3 they'll peck. If they're crammed next to each other, they

4 don't peck. I don't know how to explain that, but, you know,

5 if you've got room to fight in the elevator -- you know just

6 picture you're all in a elevator, and if you've got room to

7 elbow, you can move around, but if there is no room, no

8 one's elbowing anymore because you just can't move.

9 And that's kind of like what a lot of the production

10 had went to because the supermarkets just beat the price down

11 to what the farmers would get. You know, they wanted them

12 cheaper, cheaper, cheaper. And, you know, we got to where we

13 got by the competitive nature of the business.

14 Q. And so does that mean that prior to joining the Certified

15 Program, Rose Acre was doing what you just described, cramming

16 a lot of hens into very small spaces?

17 A. We had actually went and my brother, Anthony, put a stop

18 to it. We went down to -- I think it was 45 inches on one or

19 two farms, and we had to move back to 53 inches because we had

20 extra mortality at that point and it wasn't -- he didn't like

21 what it did to the chicken.

22 Q. Right. How did you feel about it?

23 A. I didn't like it either. You know, when you get a point

24 where -- then you have -- then you have the problem, you get

25 your customer, you know, our competitors going in at

1 45 inches, and the only way I can produce the eggs that cheap  
 2 is if I do the same thing. Otherwise, you lose the customer.  
 3 So, you know, the farmer has to sit there and make a  
 4 weighted decision, is he going to stuff his chickens in more  
 5 or does he get behind something like the UEP Certified rule  
 6 and everyone is going to treat all the their chickens the  
 7 same.

8 Q. Right. And if everybody treats all their chickens the  
 9 same, you don't have to worry that your customers can undercut  
 10 your price by cramming more chickens into a smaller space?

11 A. I don't follow what you're saying there.

12 Q. Well, didn't you just say that when the price that you  
 13 can get from your customers goes down, you as a farmer have to  
 14 balance the cost of production?

15 A. We have to make --

16 Q. Wait. If I can just finish my question.

17 And I think you said that in response to that,  
 18 farmers and your company put more hens into the cages because  
 19 you had to feed them less, it lowered your cost, and you would  
 20 be producing more eggs within that space. Correct?

21 A. I already said that we had went to the level -- we went  
 22 to 45 inches on one or two farms, and we made the decision  
 23 that was not a good choice for us, and we went back to  
 24 53 inches.

25 Q. Right. And you just said, I think, that one of the

1 advantages of having a program like the UEP Program was that  
 2 all the egg producers with the 100% rule would be doing the  
 3 same thing, which would mean you wouldn't have to worry that  
 4 other egg producers were putting more hens into a smaller  
 5 space and thereby able to produce the eggs at a lower price  
 6 than -- at a lower cost than you would have to pay to house  
 7 them at 53 inches -- 53 square inches each, right?

8 A. You said that, I didn't.

9 Q. Right. But isn't that the correct implication of what  
 10 you were saying?

11 A. I don't think so.

12 Q. Well, in what way is it wrong?

13 A. Well, your question is too long. I can't remember the  
 14 first ten words you said to the next -- the last ten words.

15 Q. Okay. And let me just ask you this: You -- you talked  
 16 about moving to 53 square inches per hen.

17 A. Yes.

18 Q. Now, this piece of paper, which is eight and a half by  
 19 11, that's more than 88 square inches, correct?

20 A. That's correct.

21 Q. And so when you talk about 53 square inches per hen,  
 22 you're talking about less space than this piece of paper,  
 23 correct?

24 A. That is the exact reason the animal rightists have been  
 25 attacking caged-egg producers for the last 20 years.

1 Q. Now, if we can go back to your mother's note. At the  
 2 very end, it says: We'll give this a lot of thought while in  
 3 Siam.

4 Is that right, Siam? Do you see that?

5 A. That's South America.

6 Q. Ah, okay. Thank you for clarifying that.

7 We'll give this a lot of thought while in South  
 8 America and let you know. Thanks.

9 Do you see that?

10 A. Yes.

11 Q. And do you have a recollection that roughly at this time  
 12 after writing this note your mother, Lois, in fact, took a  
 13 trip to South America?

14 A. My mother would go there once or twice a year.

15 Q. And would she normally go for a couple of weeks?

16 A. She would go down and visit my brother, James and his  
 17 family that operated a farm in Uruguay.

18 Q. And would it be normally be for around a couple of weeks?

19 A. Sometimes shorter, sometimes longer.

20 Q. Okay. So this memo that K.Y. Hendrix sent was on  
 21 March 14, 2002. Do you recall that after getting back from  
 22 this trip to South America, your mother wrote a follow-up note  
 23 to K.Y. that discussed a follow-up conversation she had had  
 24 with you about the Animal Welfare Program?

25 A. I don't recollect, no.

1 Q. Okay. Let me see if I can help with that recollection.

2 MR. NEUWIRTH: May I approach, Your Honor?

3 THE COURT: Yes, you may.

4 BY MR. NEUWIRTH:

5 Q. And let me ask, Mr. Rust, if you recognize this as a  
 6 handwritten note that your mother, Lois Rust, wrote to  
 7 K.Y. Hendrix on March 27th, 2002?

8 A. Yes, this was before we had actually joined the Certified  
 9 Program. And my mom was telling K.Y. that her and I had  
 10 talked about it and, you know, we liked what they were  
 11 presenting to do, but with some of the stuff -- you know, the  
 12 concerns we had, we had to be very involved to make sure that  
 13 it didn't go astray.

14 Q. Okay. Now, I think that in one of your depositions,  
 15 where you testified under oath, you testified that the view  
 16 expressed in this note that your mother wrote was also a view  
 17 that you shared, correct?

18 A. Yes. It says "we."

19 Q. And --

20 MR. NEUWIRTH: Your Honor, we would offer  
 21 Plaintiffs' Exhibit 4 into evidence.

22 THE COURT: 4 is admitted.

23 MR. NEUWIRTH: Okay. And if we put up Plaintiffs'  
 24 Exhibit 4, please. And maybe pull out the text.

25 BY MR. NEUWIRTH:

1 Q. And do you see that this is addressed to K.Y. on  
2 March 27, 2002, just less than -- or just a few days short of  
3 a couple of weeks after that memo that K.Y. had sent to you  
4 and Mrs. Rust and others, and it's signed L. Rust, and it  
5 starts by saying: Talked to Marcus last night about the UEP  
6 Guidelines.

7 Do you see that?

8 A. Yes.

9 Q. And do you recall that when your mother got back from  
10 this trip to South America, you and her had a conversation  
11 about these guidelines, or you and she had a conversation  
12 about these guidelines?

13 A. We talked all the time, so, you know --

14 Q. Okay. And that included discussions about the business,  
15 correct?

16 A. We -- we actually didn't talk much about family matters.  
17 It was more -- the family was the business.

18 Q. Okay. And then in talking about the guidelines, it says:  
19 They are good, but we are concerned with what looks like the  
20 underlying purpose of the whole thing.

21 Do you see that?

22 A. Yes.

23 Q. Now, it's true, isn't it, that one of the things that you  
24 were concerned about at this time was, you were suspicious  
25 that the United Egg Producers was coordinating the egg

1 producers to restrict the supply of eggs to boost prices,  
2 right?

3 A. Repeat your question, please.

4 Q. At this time, this letter in early 2002, you personally  
5 were concerned that the United Egg Producers was coordinating  
6 what the egg producers were doing to restrict the supply of  
7 eggs to get prices to go up?

8 A. No.

9 Q. No?

10 A. No.

11 Q. Okay. Do you recall that you had a deposition related to  
12 the subject matter of your shell egg business in a case that  
13 is pending in Kansas?

14 A. Repeat your question. I don't recall what you're --

15 Q. Do you recall that you gave testimony in a case related  
16 to the shell egg business in the United States that is going  
17 on in Kansas?

18 A. I never gave any testimony in a case in Kansas.

19 Q. Okay. And just to be clear, I'm not asking if it took  
20 place in Kansas, but if you recall that you gave testimony  
21 that was for the purpose of being used in a case taking place  
22 in Kansas?

23 A. A deposition for a case.

24 Q. And in that deposition, you swore an oath --

25 A. Yes.

1 Q. -- and there was a court reporter, and you gave testimony  
2 in response to questions that were asked, correct?

3 A. Yes.

4 Q. Okay. If I could, let me hand you the transcript of that  
5 deposition. It's in two volumes. And I would ask if you  
6 could please be good enough to take Volume I of that  
7 transcript and turn to --

8 A. How do I know which one's Volume I?

9 Q. I believe it's the one that has the number one on the  
10 upper right corner.

11 A. Oh, the page, okay.

12 Q. Sorry if that was unclear.

13 And I would appreciate if you could turn to  
14 page 186. And do you see that at the bottom of the page  
15 starting on line 21, there's a question which says: Is one of  
16 the things that you were suspicious of prior to joining UEP is  
17 that UEP was coordinating egg producers to restrict the supply  
18 of eggs to boost prices?

19 And your answer was: We were suspicious.

20 Do you see that?

21 A. We have always been suspicious, but that's not quite how  
22 you worded your previous question there. I -- I have a hard  
23 time when you make long twisting questions, and I don't know  
24 exactly, you know, what answer you're trying to get. But, you  
25 know, I'll tell the jury, we was always suspicious of what UEP

1 was doing. You know, I'll make that clear.

2 But there was never discussions that UEP about this  
3 being something to restrict supply, as you stated in your  
4 question, about restricting the supply, and it was always  
5 about hen space. We could build all the chicken houses --  
6 everyone could build all the chicken houses they want.

7 MR. NEUWIRTH: Can we please play MRK186?

8 (Video excerpt played.)

9 Question: Is one of the things that you were  
10 suspicious of, prior to you joining UEP, is that UEP was  
11 coordinating egg producers to restrict the supply of eggs to  
12 reduce prices?

13 Answer: We were suspicious.

14 BY MR NEUWIRTH:

15 Q. And that was the testimony that you gave at deposition,  
16 correct?

17 A. Yes.

18 Q. Now, isn't it also true that you were skeptical about the  
19 UEP Certified Program prior to joining it because you had  
20 heard rumors about the United Egg Producers supply management  
21 recommendations?

22 A. UEP represent probably six to ten different kind of egg  
23 producers. You have small farms, you've got big farms, you've  
24 got hen line breakers who only make liquid egg, you've got  
25 people like us that was fully integrated. You have people who

1 may have been a contract farmer. You know, you have people  
 2 that -- there's so many different types of producers. When  
 3 you put them all in a room, UEP, they had this guy Gene  
 4 Gregory, and he was kind of like a -- um -- he was a crusader.  
 5 He was always crusading for the farmers to make lots of money.  
 6 And he always was telling these producers, you need to do this  
 7 this time of the year, you need to do that that time of the  
 8 year. We never bought into any of that.

9 Our family -- we've always been a producer, you  
 10 know, we produced maximum amount we can. And we, from our  
 11 perspective, if you return to part of the year and you don't  
 12 produce eggs, then you're not going to have development of new  
 13 customers. We always used low price times as the time to get  
 14 new customers so we could go out. We'd have a sale or a  
 15 promotion so we'd go out and build more henhouses and then  
 16 have more eggs to sell the next year. So we'd have more  
 17 customers. That's how we grew our business.

18 Q. So is it correct that prior to joining the United Egg  
 19 Producers, you were skeptical of the UEP Certified Program  
 20 because you had heard rumors about the UEP's supply management  
 21 recommendations?

22 A. Like I said, they have always promoted that to their  
 23 members. They tried to give economical advice to their  
 24 members, it's a voluntary thing. You guys -- this is the time  
 25 of the year, this is what we think the price is going to be.

1 Do you really want to have chickens then? And then you, the  
 2 producer, had to make your mind up and say, yeah, I do or I  
 3 don't. You know, you had to determine if you're going to lose  
 4 money, if the market's going to be 60 cents and your feed  
 5 costs and your total costs to produce is going to be 70 cents,  
 6 do you want to keep extra chickens in that time? Well, what  
 7 -- the UEP hired this economist guy by the name of Dr. Bell,  
 8 he would come out with all these charts, trying to explain to  
 9 the farmers this is what you should be doing. But in our  
 10 business, it didn't fit our business model. We were in the  
 11 business of -- we kind of used, you know -- I don't know how  
 12 to say that. We -- when they was out promoting to say you  
 13 shouldn't be -- you know, you're going to lose money, we  
 14 always thought that was a good time because we had breaking  
 15 eggs and taking care of dried eggs, we put eggs up in dryers  
 16 where we'd dry the eggs and put them up in storage because  
 17 that was the cheap time.

18 We wanted -- and any time you take a chicken out of  
 19 the henhouse early, you still got to pay the light bill. I've  
 20 still got to pay the caretaker of the house. You still have  
 21 to make the mortgage payment on it. And when they take those  
 22 chickens out under their recommendation, all those producers  
 23 that followed those recommendations, it made their costs of  
 24 eggs go higher for all the other eggs they sold out of that  
 25 house, and I don't -- you know, they always promoted it. You

1 know, to me, it was dumb.  
 2 Q. Okay. When I asked you if prior to joining the United  
 3 Egg Producers you were skeptical because you had heard rumors  
 4 about the UEP supply management recommendations, was that one  
 5 of the questions that you thought was convoluted and  
 6 complicated to be able to answer?

7 A. I didn't fully realize when we had joined it how  
 8 voluntary it was and it was -- there was never an obligation  
 9 for anyone to do it.

10 Q. Okay. So does that mean that the answer to the question  
 11 is yes, that before joining --

12 A. You'd have to reask your question. I've long since  
 13 forgot it. Sorry.

14 Q. Okay. Well, since you were asked it at your deposition,  
 15 why don't I direct you to in the second volume there, page 382  
 16 beginning on line 14, and you can either follow along or watch  
 17 the video. Why don't you play MRK382, please.

18 (Video excerpt played.)

19 Question: Prior to joining?

20 Answer: Yes.

21 Question: Okay.

22 Answer: Explaining what it was. You know, we had  
 23 our suspicions of what -- you know, what -- you know, we was  
 24 apprehensive of the group.

25 Question: What were you skeptical about then?

1 Answer: Some of the things we heard.

2 Question: About what?

3 Answer: How do you mean?

4 Question: What are some of the things you heard?

5 About what?

6 Answer: About how -- what -- what they did as far  
 7 as, you know, their recommendations or their so-called supply  
 8 management thing.

9 Question: Okay, you heard rumors about that?

10 Answer: Yes.

11 Question: All right. And this was prior to  
 12 joining?

13 Answer: They've done that for 20 years.

14 Question: Okay.

15 (Video excerpt stopped.)

16 BY MR. NEUWIRTH:

17 Q. And that was the testimony you gave at that deposition  
 18 when you were asked the question that I just asked you today,  
 19 correct?

20 A. Yeah, and I don't think there's any difference than what  
 21 you asked today. My answer's still about the same. They've  
 22 always done that. I'm not trying to deny that.

23 Q. Okay.

24 MR. KING: Your Honor, if I can just ask counsel,  
 25 since it's not on the video, that when before the video is

1 played, he can at least indicate the page and line number.

2 THE COURT: I think he did, at least I had the page.

3 It was 182 or 3.

4 MR. NEUWIRTH: 382.

5 THE COURT: 382.

6 MR. NEUWIRTH: Yes, I did tell you that.

7 MR. KING: Sorry.

8 MR. NEUWIRTH: Please let me know if you don't hear

9 at any point in time. I'm sorry.

10 THE COURT: He will let you know rather than you

11 guys talking to each other.

12 MR. NEUWIRTH: Yes, Your Honor.

13 BY MR. NEUWIRTH:

14 Q. Now, what did you do, if anything, in response to this

15 note that Lois wrote, your mother Lois Rust wrote? I

16 apologize for just calling her Lois.

17 A. I made sure that we had people on each of the different

18 committees that we thought was going to be important to be on

19 to make sure that nothing took place that we was suspicious

20 of.

21 Q. And I think you mentioned earlier that K.Y. Hendrix

22 represented the company on the Animal Welfare Committee?

23 A. Yes.

24 Q. Okay. Now, it's correct, isn't it, that you felt that

25 after all that was done to create and adopt the Certified

1 Program at the United Egg Producers, in fact, it never really

2 made the animal rights groups happy, correct?

3 A. I think it definitely lessened their punch.

4 Q. Right. If you could look, let me give you another

5 deposition transcript. This is from the deposition you took

6 on March 7, 2014 in this case.

7 MR. NEUWIRTH: May I approach, Your Honor?

8 THE COURT: Yes, you may.

9 MR. NEUWIRTH: And I believe, Your Honor -- oh.

10 I'm sorry.

11 BY MR. NEUWIRTH:

12 Q. And, Mr. Rust, I would ask if you could turn to, in that

13 transcript I just gave you, page 181, lines 20 to 21. And

14 didn't you say at your deposition: "And our program never

15 made the animal rightists happy anyhow"?

16 A. Correct.

17 Q. Now, isn't it true that even after Rose Acre joined the

18 United Egg Producers Certified Program, you were still trying

19 to hide from the animal rights groups what you were actually

20 doing to your hens?

21 A. No, I don't agree with that. What I will agree with is

22 we were trying to maintain a low profile. We didn't want to

23 be in the gun sights of animal rights, and, you know, if we

24 could fined -- you know, we looked at the UEP Certified

25 Program. That was going to be a good thing, because everyone

1 would be in the program and we would all be the same target,

2 you know, hopefully. You don't want to be an individual

3 target.

4 Q. Didn't you say in this case -- in talking about the

5 period after you had joined the program, didn't you say in

6 this case that it's not a good thing to show the animal rights

7 groups what happens to all the birds? What happens to all the

8 birds. And so you don't fully tell in this industry what

9 happens to the birds. Didn't you say that under oath?

10 A. Where are you referring to?

11 Q. Okay, let me ask you to look --

12 A. And what context or what are we looking at?

13 Q. Okay, why don't we look at your deposition transcript

14 from this case and if we look at page 59, line 23.

15 A. What page again?

16 Q. 59, line 23. And the relevant discussion actually starts

17 a little bit before then where you're being asked about a

18 document that was sent by the United Egg -- by the United Egg

19 Producers in 2003, and you gave an answer about supply, and

20 you were asked a follow-up question about supply.

21 So why don't we take a look at the clip and then we

22 can discuss.

23 A. Let me read -- can I read?

24 Q. Sure.

25 A. Going before --

1 Q. Of course, please. I was going to play the whole thing,

2 but please take your time if you want to look at it first.

3 THE COURT: Yes, sir.

4 MR. KING: Objection based on Rule 403.

5 THE COURT: What is the pending question,

6 Mr. Neuwirth, other than to look at the deposition?

7 MR. NEUWIRTH: What started this was I had asked

8 earlier whether Mr. Rust agreed that this Certified Program

9 had actually never really satisfied the animal rights groups

10 and whether it was true --

11 THE COURT: Okay, I remember that part.

12 MR. NEUWIRTH: And whether it was true -- whether

13 it's true that he had testified that even after joining the

14 program, Rose Acre was still trying to hide from animal rights

15 groups how the hens were treated.

16 THE COURT: Okay, I'll tell you what. There's been

17 a request on behalf of the jury that we end early today.

18 MR. NEUWIRTH: Okay.

19 THE COURT: So I think that we're going to do that

20 for their benefit --

21 MR. NEUWIRTH: Certainly.

22 THE COURT: -- in honor of, I don't know, Mother's

23 Day.

24 MR. NEUWIRTH: Fair enough.

25 THE COURT: Let's say that. And let them be on